Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

VICTORIA GIAMPA,
Petitioner,

vs.

BRYCE C. DUCKWORTH, ESQ., SMITH, LARSEN & WIXOM; CHARLES F. GIAMPA; DISTRICT COURT JUDGE GLORIA SANCHEZ; DISTRICT COURT JUDGE SANDRA L. POMRENZE; DR. LOUIS MORTILLARO; THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; NEVADA SUPREME COURT; NEVADA STATE LEGISLATURE,

Respondents.

Petition for Writ of Certiorari to the Nevada Supreme Court

PETITION FOR WRIT OF CERTIORARI

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Petitioner In Proper Person

QUESTIONS PRESENTED

What process is constitutionally due a minor child whose parent seeks a change of primary custody to joint custody when the Nevada Legislature fails to correctly define its terms and specifically whether prior mandatory mediation is required regarding constitutional issues of education and welfare before an adversary hearing is conducted to avoid harm to the children?

Whether the Nevada Supreme Court and Family Court Judges violates Victoria's liberty interests when they repeatedly deny her relief as an *aggrieved person* after she satisfies her heavy burden of proving a "clear and indisputable" right to mandamus relief recognized in *Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir.1977)?

Whether the Nevada Supreme Court's mooting of Victoria's Writ prevents her from seeking a determination that the Court's temporary order was incorrect on the merits when constitutional issues of the minor children's welfare and education were ignored and not addressed through investigation and/or mediation, and whether it would be inequitable to award fees to Attorney Duckworth effectively mooting out claims for child custody and other underlying issues which are still pending?

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Petitioner Victoria Giampa seeks this Court's immediate review of the unconstitutional procedures that are currently being used in the State of Nevada in an apparent effort to issue temporary orders denying minor children constitutional protected interest of parents to direct their upbringing and to guide their education and to issue orders emancipating minor children before the age of majority solely to eliminate child support, and to issue a change of joint custody when the Nevada Legislature fails to clearly define its terms. That keeping the children's constitutional issues of their education and welfare from being evaluated until a psychologist identifies their problems and until an adversary hearing is conducted is unconstitutional and places the children's welfare and lack of an appropriate education at risk of harm. This case illustrates the Court's shocking lack of concern and violations of their constitutional obligations to protect the minor children under the Best Interest of the Children Standard. Time is of the essence in this case, which raises important questions of historical significance.

UNREPORTED COURT OPINIONS BELOW

6/3/09 Order Denying Rehearing: **[App. A]**; 5/5/09 Notice in Lieu of Remittitur: **[App B]**; 4/9/09/ Order Denying Rehearing in Docket No. 52424 and Transferring Petition and Motion to Motion to Docket No. 51422: **[App. D]**; 4/9/09 Order Recalling Remittitur: **[App. E]**; 2/20/09 Order Affirming Appeal In Part and Dismissing Appeal in Part: **[App. I]**; 10/2/08 Order Denying Petition for Writ of Mandamus or Prohibition: **[App. L]**; 6/12/08 Order Denying Motion for Stay: **[App. Q]**; 1/25/08 Order Dismissing Appeal: **[App. S]**; 1/15/08, Order Denying Rehearing: **[App.**

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STATEMENT OF JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The judgment of the Nevada Supreme Court was entered on 3/10/09. On 5/12/09, the U.S. Supreme Court extended the time within which to file a petition for a writ of certiorari to and including 7/12/09. This jurisdiction is invoked under 28 U.S.C. § 1257(a).

Petitioner recognizes that this Court only rarely grants certiorari. This case, however, is extraordinary. The Family Law Section of the State Bar of Nevada requested the Nevada Supreme Court's assistance in defining "joint custody, *Potter v. Potter*, 121 Nev. 613, 119 P.3d 1246, (2005). Since that time, the Nevada Legislature fails to correctly define joint custody, and Eighth Judicial Circuit Judges have issued arbitrary and capricious rulings regarding joint custody and destroying families for attorneys' profits. Petitioner contends that this case is of such imperative public importance as to justify requiring an immediate determination in this Court which implicates child support guidelines. For the reasons outlined above and discussed in more detail below, this is plainly such a case. Parents faced with the loss of custody of their

children and children faced with the loss of an appropriate education due to their loss of guidance by their parents in our Nation may turn on this Court's resolution of the issues presented. And, due to the lack of checks and balances in Family Court in the State of Nevada, the U.S. Supreme Court's immediate intervention is warranted in order to ensure that the rule of law is adhered to in this time of great national concern.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The First Amendment to the Constitution of the U.S. provides, in pertinent part, that "Congress shall make no law...abridging the freedom of speech, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I. The Court has long recognized that the Amendment's Due Process Clause like its Fifth Amendment counterpart guarantees more than fair process. The Clause includes a substantive component that provides heightened protection against governmental interference with certain fundamental rights and liberty interests, and the liberty interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interest recognized by this Court.

The State of Nevada statute governing state-court orders of a change of primary custody to joint custody provides:
125.480 Best Interest of Child; preferences; considerations of court; presumption when court determines that parent or person residing with child is perpetrator of domestic violence.
1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that *joint custody* would be in the best interest of the child, the court may grant custody to the parties *jointly*.
2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.
3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:
a) To both parents jointly pursuant to NRS 125.490 or to either parent. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent's application.

NRS 125.490 Joint custody.

1. There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.
3. For assistance in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted.

STATEMENT OF THE CASE

This petition seeks to remedy the State of Nevada Family Court's widespread and systemic infringement upon the emancipation of minor children and denying them equal protection under the law to the liberty interest in a parent's right to the care, custody and management of their children which is the preeminent constitutional right in this nation. The children's right to an appropriate education to be guided by their parents implicates uniquely important national liberty interests. The unequal and void for vagueness term of "joint custody" in Nevada wherein Family Court Judges issue temporary orders from primary to joint custody cases without *mandating* mediation on fundamental issues of the minor children's education and welfare is a patently unfair and fraudulent process that is having an impact far beyond Nevada's borders and that cries out for correction by this Court.
Victoria contends that Judge Gloria S. Sanchez's temporary order is unconstitutional on its face because it denies the minor children immediate determinations regarding constitutional issues of their education and welfare. That it denies parents substantive due process by permitting temporary orders of primary custodian rights into joint custody without the Nevada legislature defining its terms

thus making them void. Victoria also contends that the statute is facially unconstitutional because it does not require a showing that changing an order to joint custody is in the best interests of the children when it fails to define the term "joint custody" and denies the parties an opportunity to define for themselves what constitutes joint custody. That Victoria has been deprived of her fundamental right to a parent-child relationship. Victoria also maintains her procedural due process rights were infringed because she was not provided with notice, with an opportunity to be heard on a case by case basis; nor with a prompt determination of the children's constitutional issues of education and welfare when the Court issued its temporary order leaving Victoria and her children in legal limbo. That the Nevada Supreme Court chooses to abandon the standard of a preponderance of evidence when Victoria raises both substantive and procedural due process challenges to the Best Interests of the Children standard. Its inaction and silence is no surprise. Victoria contends that the Nevada Supreme Court fails in its obligation to determine whether her challenges allege a clearly established constitutional violation.

REASONS FOR GRANTING THE PETITION

State of Nevada fails to reasonably define "joint custody" under the Best Interests of the Children Standard. A 'fit parent' whose definition has not been defined by the State of Nevada stands under the same umbrella with a parent who has neglected, murdered, mentally, physically or sexually exploited their child when Nevada Family Court Judges issues orders for a change of primary custody to joint custody.

Sarah Giampa, was born on 12/11/87 and Marco Giampa, was born on August 15, 1989, and lived with both of their parents. The parties were married for 21 years. Charles Giampa filed for divorce in October of 1998. The parties stipulated to petitioner's fitness as a parent and was awarded primary custody 3 times.

On 12/13/04, Victoria contends that Attorney Bryce Duckworth abuses the legal process and uses Judge Gloria S. Sanchez's authority and power to shorten time in order to hear a holiday visitation matter and challenges the use of a procedure normally reserved for cases of an emergency nature. Victoria contends that no real emergency existed other than to abuse the legal process and churn litigation as a catalyst by the simple filing of an action to gain de facto custody and eventually gain primary physical custody. Victoria contends that it is the district court's jurisdiction to make short-term temporary adjustments to the parties' custody arrangement on an emergency basis to protect and safeguard a child's welfare and security and not to allow Attorney Duckworth to file an emergency motion for the minor children to travel alone without both parents to Chicago at the 12th hour of a Christmas holiday solely to churn litigation. Charles and his attorney fails to file for mediation first on parent-child *issues*. Victoria opposed the children traveling to Chicago over Charles' objection since he was purposely encouraging and rewarding their children's bad behavior. That it was not permissible for Judge Sanchez to assault Victoria's parental authority at a time when both minor children were in a vulnerable adolescent stage and having problems with school and delinquent behavior. That the court deliberately and

purposefully deprived Victoria of her fundamental parental right to enforce rules regarding their minor children's behavior.

On 1/20/05, Attorney Duckworth files Motion to Modify Custody *and [Motion to]* Resolve Parent-Child *Issues*. Victoria contends that Attorney Duckworth's cites rules when they benefit him and conveniently ignores them when they do not. Is Attorney Duckworth filing a *combined* MOTION TO *MODIFY CUSTODY* and a [*MOTION*] TO RESOLVE PARENT-CHILD *ISSUES*? If EDCR 5.81 mandates that " ...all contested family matters involving minor children ***must*** *be submitted to the judge prior to the setting of a trial date*; a request that the judge consider these issues is made *first* by filing of a motion to resolve parent-child issues." Attorney Duckworth gives Victoria improper notice for his Motion to Modify Custody... and files it untimely; and further, Judge Sanchez should have rescheduled the hearing. Victoria further questions Attorney Duckworth's motives and begs another question: Is Attorney Duckworth filing only *a [MOTION]* TO RESOLVE PARENT-CHILD *ISSUES*? If EDCR 2.20 mandates that "All motions must contain a notice of motion setting the same for hearing on a day when the judge to whom the case is assigned is hearing civil motions and *not less than 21 days from the date the motion is served and filed*," then Attorney Duckworth gives Victoria improper notice for filing a motion to change custody and violates EDCR 5.81(a), Resolution of Parent-Child Issues which allows for referral of the parties to the Family Mediation Center first to resolve disputes over custody which states in pertinent part:

Unless otherwise directed by the court, all contested family matters involving minor children ***must*** *be submitted to the judge prior to the setting of a trial date. A request that the judge consider these issues is made by the filing of a motion to resolve parent-child issues.*

Victoria contends that due process requires that notice be given before a party's substantial rights are affected and further contends that due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Victoria further contends that Attorney Duckworth blurs the distinction between the combined motions when he deviously cites

1. NRS 125.480 in his *[Motion]* To Resolve Parent Child *Issues*: ..in determining custody of a minor child, the sole consideration of the court is the best interest of the child;"

2. NRS 125.510 in his *[Motion]* To Resolve Parent-Child *Issues*: "...in determining custody of a minor child...the court may...during the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest;

3. *Murphy v. Murphy*, 84 Nev. 710, 447 P.2d 664 (1968), in his *[Motion]* To Resolve Parent-Child *Issues* which holds that: "A change in custody is warranted only when: (1) the circumstances of the parents have been materially altered;

and (2) the child's welfare would be substantially enhanced by the change.

On 8/25/05, **[App. FF]** over Victoria's objections, Judge Sanchez ordered the following:
"...that child custody shall be modified temporarily for purposes of stability, with the parties maintaining joint legal custody and shared physical custody, with Plaintiff maintaining primary physical custody..."

On 8/31/05, Dr. Louis Mortillaro conducts an evaluation of Marco.

On 9/6/05, Victoria files Motion for Reconsideration of *[Plaintiff's Motion For a Change of Custody and Motion For]* Parent-Child Issues. Hearing Date *(delayed 45 days)* to 10/20/05, 9:00 a.m. She argued that she was deprived of her fundamental right to parent her minor children; that Charles had not encouraged any type of a relationship; that the newly discovered evidence is that the minor children now reside at the Country Club Towers, that it was impossible and extremely difficult to overcome the emotional and physical distance between Victoria and her children; that Judge Sanchez' arbitrary and capricious ruling made any type of relationship with Victoria and her children non-existent which was clearly not in the best interest of the minor children.

On 10/12/05, pursuant to Court Order, Dr. Louis Mortillaro interviews Sarah. From 10/17/05 to 12/29/05, Victoria writes Dr. Mortillaro numerous letters expressing her concerns that the parties' minor children were left to live alone and without parental supervision at the Country Club

Towers. Victoria contends that in direct violation of Judge Sanchez's previous Court Order of 12/7/05, **[App. CC].** Dr. Mortillaro fails to communicate with Victoria regarding her concerns that the children were living alone without parental supervision, fails to address Marco's untreated ADHH, untreated anger issues, problems with receiving an appropriate education from a Christian High school as previously ordered by this Court, fails to follow through with counseling for Sarah's untreated problems with depression and an eating disorder, and other issues involving the children dropping out of school, and counseling for Victoria and her minor children, that the loss of custody and parenting her two children was directly caused by such prejudice. Victoria requests this Court take judicial notice that on 10/1/08 and on 4/10/09 **[App. C.]** Victoria filed with the Nevada State Board of Medical Examiners a complaint against Dr. Louis F. Mortillaro for violating Judge Sanchez's order and placing the Board on notice of the Temporary Restraining Order she had to resort in filing against her son Marco on 3/13/09 **[App. H]** which Victoria believes is due to Dr. Mortillaro's failure to communicate and following through with counseling which directly caused her to lose visitation and custody of her 2 minor children. Additionally, Victoria requests this Court take judicial notice that on 3/16/09 **[App. G].** Victoria writes a letter to Judge Mark Stevens, Henderson Traffic Court, and pleaded with this court to intervene on her behalf to help her son Marco and order anger management before returning over his driver's license.

On 7/19/07, Judge Sandra Pomrenze ignores Victoria's pleas to make short-term orders regarding the parties' minor children's welfare and ordered that "the daughter of the

parties will soon *emancipate* and there will be an issue regarding Child Support." Victoria challenged Judge Pomrenze's premature mandate that these minor children have not emancipated because they still have no capacity to contract for a rental agreement at the Country Club Towers; they are still subject to legal control by their father, because this Court has never conducted a hearing nor issued Orders declaring the minor children legally emancipated. That Judge Pomrenze chose to instead ignore the minor children's need for intervention into issues of education, psychological and medical needs.

On 3/28/06, **[App. AA]** Nevada Supreme Court ordered that "...the order does not finally resolve the parties' various motions and countermotions to modify custody...Once the district court enters a written order resolving these issues, appellant may appeal if she is *aggrieved*.

On 7/30/06, a hearing was held where Victoria withdrew her appeal in order to allow for reasonable discovery and an evidentiary hearing on custody and financial issues and Judge Sanchez summarily denied Victoria relief. **[App. Z]**.

On 10/22/08, Petitioner filed Permission to File an Extension of Time for the purpose of filing Permission for Leave to Amend Petition for Writ ....**[App. K]**. On 11/7/08 Victoria filed Supplement #1 of List of Exhibits in Support of Petitioner Victoria Giampa's Permission for Leave to Amend Petition for Writ ... **[App. J]**. On 10/15/07, Victoria filed Application for Petition for Writ... **[App. W]** and claims that at that time she set forth sufficient facts by a preponderance of evidence that demonstrate she has established a prima facie case for the issuance of such Writ.

At that time Victoria sought, but has been unable, for one reason or another, to obtain from Judge Pomrenze a Court Order for correction and/or clarification due to such clerical error affecting issues to be argued and decided at the 8/28/07 hearing. Victoria had cause for concern as to which motions will be heard and to what extent at the hearing scheduled for 8/28/07, and the Minute Order does not in any way identify or itemize the unheard and unresolved motions pending before Judge Pomrenze.

On 1/25/08, the Supreme Court issued its Order Dismissing Appeal **[App. S]** which states again that "Once the district court enters a written order resolving the NRCP 60(b) motion, appellant, if *aggrieved*, may file an appeal from that order. Accordingly, as we lack jurisdiction over this appeal, we Order this appeal Dismissed."

On 9/12/08, Victoria filed a Petition for Writ... **[App. M]** and outlined a timeline of the motions heard before Judge Pomrenze wherein she steadfastly refused to make any short-term orders concerning the minor children under the Best Interest of the Children standard.

On 10/2/08, the Supreme Court issued An Order Denying Petition for Writ... **[App. L]**, which states that a petition must also be supported by an affidavit of the party beneficially interested and must be served upon the respondent judge and all parties to the district court action and prevents her from seeking a special order after a final order as an *aggrieved person*. Victoria contends that although she did not 'attach' any exhibits to her 9/12/08...Petition for Writ.... **[App. M],** she fully satisfies the requirements of NRCP 21 by "making a statement of the

facts necessary to an understanding of the issues presented by the application, a statement of the issues presented and of the relief sought, a statement of the reasons why the Writ should issue, and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition" when she quoted and cited the pertinent opinions and the pertinent parts of the record from Judge Pomrenze's 3/7/08 Findings of Fact and Conclusions of Law Order **[App. R]** and quoted and cited the pertinent opinions and the pertinent parts of the record from the Nevada Supreme Court's 1/25/08 Order Dismissing Appeal **[App. S]** in her Writ. Victoria further contends that in the exercise of reasonable diligence she made sufficient reference to those Orders permitting the Nevada Supreme Court to consider it in respect to its rulings as to some of the claims presented. She set forth the substance of all of the evidence considered in the light of her contentions, supporting the conclusion that Judge Pomrenze and Judge Sanchez deliberately abused their discretion, commits misconduct, and supports the conclusion of fraud committed by Attorney Duckworth and his client, Charles, and thereafter, the Nevada Supreme Court summarily denied her relief and affirmed $1,500 in sanctions, **[App I & R]** Additionally, on 6/10/05, the Nevada Supreme Court issued Order Establishing Pilot Program In Civil Appeals wherein it issued Orders which would allow liberal pleadings drafted by in-proper persons and suspended NRAP 46(b) for cases processed throughout the pilot program.

Victoria contends that the Supreme Court fails to exercise its obligation to consider Victoria's writ petitions when important issues of law need clarification and this court's review would serve considerations of public policy, sound

judicial economy and administration. Victoria further contends that she has satisfied her heavy burden of proving a "clear and indisputable" right to mandamus relief of some of the following factors recognized in *Bauman v. U.S. Dist. Court,* 557 F.2d 650 (9th Cir.1977) when she presented the following questions to the Nevada Supreme Court and was summarily denied relief to the following constitutional questions:

Whether Victoria has adequate means of attaining the desired relief, such as a direct appeal?
Victoria contends that the Nevada Supreme Court deliberately ignores Victoria's Writ of Mandamus when she argues that Judge Pomrenze fails to abide by the Nevada Supreme Court's 1/25/08 Order which prevents Victoria from filing her motion to seek a final appealable order pursuant to NRCP 60(b) and to properly proceed as an *aggrieved person.* Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981); that "the judge has an obligation, part of her sworn duty as a judge, to hear and decide cases properly before her." Judge Pomrenze "is not at liberty, nor does she have the right, to take herself out of a case and burden another judge with her responsibility without good and legal cause." *Ham v. District Court*, 93 Nev. 409, 415, 566 P.2d 420, 424 (1977). *In re Lemoine*, 686 So.2d 837, 840 (La. 1997). Judge Pomrenze deliberately and purposefully refuses to issue Orders and prejudices Victoria's right to allow her to file her motion and ultimately file an appeal as an *aggrieved person*, *Barry v. Lindner*, 119 Nev. 661, 669, 81 P.3d 537, 542-43 (2003). On 12/5/05 Victoria filed Reply to Plaintiff's Opposition to Defendant's Motion to Set Aside Temporary Order for Change of Physical Custody Pursuant to NRCP 60(b) **[App. DD]** and

thereafter, Judge Pomrenze summarily denied Victoria from seeking a final appealable order.

Whether Judge Pomrenze's Order raises new and important problems or issues of law of first impression when she deems Victoria a vexatious litigator and prejudices and restricts her right to file pleadings in defense of fraud committed by Charles and his counsel of record Attorney Duckworth?

At the 12/27/07 Hearing, Judge Pomrenze issues Orders and on 3/7/08 **[App. R.]** declares Victoria a vexatious litigant. Victoria argues that Attorney Duckworth disregards Chief District Court Judge Kathy A. Hardcastle's 7/20/07 unappealed and unchallenged Order when she declares that Victoria is not a vexatious litigant and proceeds to file his motion anyway requesting Judge Pomrenze to declare Victoria a vexatious litigant under legal theories he thought would ultimately prevail. Nevada Courts have recognized in *Rohlfing v. District Court,* 106 Nev. 902, 803 P.2d 659 (1990) that generally a district judge has no authority to review another judge's order. Judge Sanchez, on 2/11/04, made opposite statements about Victoria's ability to file motions. Throughout the history of this case, Judge Sanchez never deemed Victoria a vexatious litigator, never found her pleadings to be without merit, and declared her a well-informed pro per litigant which proves Judge Pomrenze of bias and prejudice.

Whether Judge Sanchez's and Judge Pomrenze's Orders sanctioning Victoria as a defendant amounts to criminal sanctions and justifies abridging Victoria's 14th Amendment right to the care, custody,

and management of her children and thus, clearly erroneous as a matter of law when Attorney Duckworth and Charles commits fraud upon the court?

Victoria further argues that even though Judge Pomrenze may as a general rule restrict her access to filing papers, constitutional considerations prohibit a complete ban on Victoria's filings if the ban prevents her from a fundamental liberty interest as a parent in the care custody, and management of her child which is protected by the Fourteenth Amendment, and that such Orders are impermissible, *Sullivan v. District Court*, 111 Nev. 1367, 904 P.2d 1039 (1995). Victoria further contends that writ petitioners are also more suitable for review of sanctions and that the Nevada Courts have recognized that an attorney could challenge sanctions only by extraordinary writ, *Albany v. Arcata Assoc.*, 106 Nev. 688, 799 P.2d 566 (1990). A writ petition permits the court this flexibility because the court retains jurisdiction over the order during the pendency of the writ petition. Victoria set forth a review of the history of massive sanctions imposed against her by this Court that she defends as unconscionable and outrageous. Since then, Victoria has sought, but has been unable, for one reason or another, to obtain from Judge Pomrenze a Court Order for correction and/or clarification due to such clerical error affecting issues to be argued and decided at the 8/28/07 hearing.

On 8/28/07, **[App. X]** without proper authority, Judge Pomrenze vacates certain hearing dates, and further alleges that she has reasonable cause for overall concern for the correct direction of this case because she has pled a prima

facie case establishing fraud upon the court, and, therefore, she should be allowed her day in court to obtain the appropriate court Order(s). Given that the salutary purpose of NRCP 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party, she should have been granted a hearing.

Whether Judge Sanchez's and Judge Pomrenze's conduct abridges Victoria's 14th Amendment right to the care, custody and management of her minor children thereby deliberately and purposefully abandoning equal protection of the law for a protected class of individuals?

Victoria contends that Judge Pomrenze's conduct demonstrates bias when she fails and refuses to act reasonably and responsibly towards the parties' minor children. NRS 125.480 requires that the parties and this court act at all times in the best interests of the minor children. On 8/28/07, Judge Pomrenze found that the Court could do nothing for her in terms of relief for past custody violations and ignored the *children's welfare* under the Best Interests of the Children standard and quickly switched to the issue of money damages as follows:

Judge Pomrenze: All of – everything that happened with the children predates my entry into the case, but anything I can do now has to recognize that the children ***have aged out,*** *okay, if you will. Okay? Not much I can do about the children now. They're either going to be happy, healthy adults or they're not and I have to go, sorry, it's too late for me to be able to step in their best interest.*

Judge Pomrenze: I mean, the main issue see to me is what has happened to these kids here, but now it's too late. It's unfortunate, but it is too late. And Marco is going to do what he's going to do and Sarah is going to go do what she's going to do.
Judge Pomrenze: Ma'am, I look at violations at the time they occurred. I don't look at them necessarily but I just want you to understand at this point in time I'm getting this case, which is now as I said, a multi-bucket case, so far from me being able to address those issues because, unfortunately now these children are close -- one's emancipated and the other one is going to emancipate in four weeks. There is really not much I can do to issue Orders to remedy how Marco may have been raised. Okay. It's just too late - it is - as a practical matter. And I want you to understand that that's too late. Does that mean I cannot sanction a party for violating Orders?

Whether Victoria's appeals may be abandoned by Judge Pomrenze and the Nevada Supreme Court, and as a result of such abandonment divests them of authority to consider its merits?

Victoria further contends that Charles' response and opposition is legally insufficient and unable to sustain a viable objection in these proceedings and his responsive papers are categorically frivolous and meritless all done to aid, facilitate and to perpetuate fraud upon the Court. NRCP 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party," *Nevada Industrial Dev. v. Benedetti*, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987).

Whether Victoria will be damaged in a way not correctable on appeal?

On 1/15/08, the Supreme Court issues an Order Denying Rehearing **[App. T]** which states that "To the extent that the challenged order resolves motions regarding custody of the children and could thus be viewed as a special order after final judgment and therefore appealable under *Burton v. Burton*, 99 Nev. 698, 669 P.2d 703 (1983), the denial of these motions would necessarily be summarily affirmed based on the district court's finding that the children are adults." Victoria contends that the court has previously held that "a petitioner is damaged or prejudiced if his claim will be moot on appeal." *SG Cowen Sec. Corp. v. U.S. Dist. Court*, 189 F.3d 909, 913 (9th Cir. 1999). Victoria filed Motion to Stay and has demonstrated that she has no alternative means of relief and will suffer harm that is not correctable on appeal.

Whether Judge Sanchez and Judge Pomrenze manifests a pattern and practice of persistent *delay* and favoritism to Attorney Duckworth when he commits fraud upon the court which deprived Victoria and her minor children a prompt resolution regarding the best interest of the children statute?

Victoria argues in her Writ that the change of custody proceedings of Marco is invalid due to myriad substantive and procedural defects and all Orders should be set aside. Judge Sanchez failed to evaluate Marco's change of child custody proceedings on its own unique facts and on a *case by case basis and unlawfully combines the contaminated change of custody proceedings of Marco with the change of*

custody proceedings of Sarah. Victoria contends that in *Christy v. Carlisle*, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978), this court stated: "It is our underlying policy to have each case decided upon its merits." Victoria argues that the district courts have the inherent power to set aside judgments procured by extrinsic fraud. *Lauer v. District Court*, 62 Nev. 78, 140 P.2d 953 (1943). Victoria contends that because Judge Sanchez failed to make separate Findings of Fact and Conclusions of Law **[App. FF]** on the merits in the 1st change of custody proceedings of Marco that Attorney Duckworth's 2nd Motion to Modify Custody of Sarah filed on 7/19/05, must fail and is also void. Victoria argues that Attorney Duckworth intends his REPLY TO DEFENDANT'S RESPONSE AND OBJECTION TO PLAINTIFF'S MOTION TO *[MODIFY CUSTODY AND TO]* RESOLVE PARENT-CHILD *ISSUES* serve as a reminder to the Court that the time for filing a Reply had passed. Attorney Duckworth has the basest of motives when he callously disregards the violations he commits when he files his tardy ***REPLY....*** and belatedly cites the Nevada Revised Statute regarding a **modification of custody** in his MOTION TO RESOLVE-PARENT CHILD *ISSUES.* Victoria argues he purposefully and deliberately violates the Eighth District Court Rule 5.12(a) when he obtains evaluations from (2) psychiatrists without a Court Order in anticipation of filing a Motion For a Change of Custody of Marco. Victoria's loss of parenting both her minor children was directly caused by such fraudulent act. Judge Sanchez's act of misconduct occurs again when she deliberately ignores Attorney Duckworth's violation of Nevada Rules of Civil Procedure when he presents a Motion for Order Shortening time on a parent/child issue that should have been mediated first pursuant to EDCR 5.81

which now is the catalyst for a full-blown change of primary custody. Attorney Duckworth undertook another scheme to defraud the Court in intentionally *combining* the Motion to *Modify Custody* of Sarah with a *Motion to Resolve* Parent-Child *Issues* without first filing for mediation. Victoria argues that with the help of this Court, Attorney Duckworth and Charles commits fraud upon the court which attempts to defile the court itself or is a fraud perpetrated by officers of the court. *Appling v. State Farm Mut. Auto. Ins. Co.*, 340 F.3d 769, 780 (9th Cir.2003). He commits an abuse of process which is consistent with his pattern of misconduct and fraud when he violates Victoria's fundamental procedural due process rights without giving her proper independent notice and an opportunity to be heard on each individual motion and when he fraudulently combines the contaminated custody proceedings of Marco into *one* contaminated custody proceeding. Judge Sanchez has a pattern and practice of acting in bad faith, willful misconduct, and manifestly abuses her discretion when she deliberately violates judicial canons and acts contrary to the best interests of the minor children in spite of such knowledge. *Nichols v. Nichols*, 91 Nev. 479, 537 P.2d 1196 (1975). She displays an extreme showing of willful misconduct that would permit manipulation of the court and significantly impede the judicial process and the administration of justice." The Nevada Legislature has defined willful misconduct in NRS 1.4653(4)(b). On 10/26/98, the Judicial Commission disciplined Judge Sanchez for violating the very same judicial, Canon 3B(8): "A judge shall dispose of all judicial matters promptly, efficiently and fairly."

Whether Judge Sanchez and Judge Pomrenze deprives Victoria and her children substantive and procedural due process and principles of equal protection for a protected class of individuals which raises new and important problems or issues of law of first impression?

On 7/16/08, **[App. N]** and 9/3/08, **[App. O]** Victoria challenges the constitutionality of the Best Interests of the Children standard. She further argues that NRS 425.480 contains a neutral classification of the best interest of only *minor children,* and further challenges Judge Sanchez's and Judge Pomrenze's unevenhanded application of "emancipation" as a device designed to impose a different burden on different classes of persons. That NRS 125.510 as interpreted by the court violates principles of equal protection by discrimination based on children's 'ages.' That a pattern and practice exists in Family Court manifested by Judge Sanchez's and Judge Pomrenze's orders which discriminates against a suspect class of children and infringes on their fundamental rights as "minor children" since both judges were quick to rush the minor children into early emancipation rather than make short-term orders regarding their welfare and education. That Judge Sanchez commits error by *applying* NRS 125.490 in a joint physical custody arrangement when the Nevada Legislature had not yet fully addressed the issue of *defining* "joint physical custody." That the statute is void for vagueness when it fails to address the definition of "joint custody," fails to make a distinction between sharing parental responsibility in major decision-making matters and sharing responsibility for providing a home for the children. That Judge Sanchez with deliberate indifference

infringed on Victoria's *procedural due process rights* by depriving her of proper notice and the opportunity to be heard without issuing independent Findings of Facts and Conclusions of Law based on the factors outlined in NRS 125.490, Joint Custody, and that all Court Orders issued are void. Based on such willful misconduct, a pattern and practice of fraud and delay, which prejudices Victoria's rights, she requested that all orders be set aside.

Victoria argues that the Nevada Supreme Court commits error in not addressing unconstitutional the State's procedures for changing primary custody to joint custody since Nevada's procedures are inconsistent with the constitutional guarantees when it fails to define joint custody. Testing State of Nevada's procedures under a due process claim requires a balancing of 1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the state's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews v. Eldrige*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18; *Smith v. Organization of Foster Families*, 431 U.S. 816, 848-849, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977). Notwithstanding the minor children's liberty interest in not being supervised by either parent or left alone unnecessarily, and assuming that Victoria a parent - who has traditional interests in and responsibility for the upbringing of her children - retains a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse. The State of Nevada has significant interests in and

a duty in not allowing Family Court to impose unnecessary procedural obstacles that may discourage a parent from seeking custody and in allocating priority to emergency appeals as soon as the Supreme Court is apprised that a problem arises with a minor child's welfare rather than a parent having to spend time in filing writs, filing extensions of time, and filing proper person appeal statements. **[App. F, K, L, P, U]** The risk of error inherent in Victoria's decision to file an emergency appeal **[App. EE]** for her children's welfare is sufficiently great that some kind of immediate inquiry should have been made to determine whether the statutory requirements for "the sole consideration of the court is the best interest of the child" to determine whether the statutory requirements for its terms are satisfied and to inquire into the child's welfare for risk of harm. The State of Nevada ignored Judge Sanchez when she fails in her duty to refuse to change custody of Victoria's children who do not satisfy the standards for a change of custody. Due process did not include a thorough investigation before mandatory mediation followed by additional periodic reviews of her children's welfare which would have identified Marco or Sarah who were at risk of harm. Risk of error would have been significantly reduced by conducting mandatory mediation. However, the State of Nevada's change of custody practices do not conform with minimum due process requirements. Nevada State Statutes do not mandate a careful and thorough investigation nor mandatory mediation before a change of custody. Nevada's procedures are arbitrary in the sense that a single judge has the unbridled discretion to submit Marco to an interview by a social worker and based on that single interview has the unbridled discretion to recommend a change of custody.

While Nevada's statutory procedures for a change of custody is unconstitutional, since it fails to define "joint custody" and fails to allow the parties mandatory mediation, the independent psychological decision making process regarding counseling and psychological therapy for the parties, which includes a psychiatric evaluation, was not followed up by Dr. Mortillaro and as such prejudiced Victoria and her children.

Victoria argues that Nevada's procedures for a change of custody from primary to joint custody of minor children under the age of 18 violate the Due Process Clause of the Fourteenth Amendment **[App. N & O]** and requests an injunction against their future enforcement. Victoria rejects Nevada's entire system of changing child custody on both procedural and substantive grounds. Victoria argues that Nevada's statutory procedure for a change of custody is unconstitutional since it constitutes a severe deprivation of the children's liberty interests. The United States Supreme Court has made it clear that constitutional rights apply to minor children as well as adults. As the court stated *In re Gault*, 387 U.S. 1 (1967), "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." The Supreme Court stated in *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52 (1976), "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. The court defined this liberty interest in terms of a relationship of love and duty in a family unit which is a liberty interest entitled to constitutional protection, *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed. 2d 599 (1982). The Courts have also determined that a liberty interest is implicated if the ban prevents her from a fundamental liberty interest as

a parent in the care custody, and management of her child which is protected by the Fourteenth Amendment, and that such Orders are impermissible, *Sullivan v. District Court*, 111 Nev. 1367, 904 P.2d 1039

Victoria further argues that the Nevada Supreme Court's lack of intervention was insufficient to protect her children's liberty interest. Victoria argues that Dr. Mortillaro's refusal to communicate with her, coupled with the Court's *scheduling dates which delayed the hearings*, made the Court's decision too arbitrary to satisfy due process. Victoria argues that with respect to substantive due process, the Nevada Supreme Court fails in its obligations to address any substantive due process violations against Victoria and her children. Time and time again, Victoria turned to the Nevada Supreme Court for assistance and guidance and it fails in its obligation to order the Court to investigate any of Victoria's constitutional claims that the children were left alone without parental supervision. Victoria argues that the State of Nevada ignores the obvious and that is a significant interest in a continuing duty to protect the minor children under the best interest of the children standard. The Court has ruled that a balancing of interests is conducted to determine when procedural due process protections are warranted. These are the private interests impacted by the government action, the chance that the procedures used will result in an erroneous deprivation, the likely value of added protections, and the financial and administrative burdens of additional protections. *Mathews*. Here in applying the balancing test, the Nevada Supreme Court fails to investigate claims of fraud upon the court regarding the change of custody of the parties' minor children and the loss of Victoria's liberty interests in her

parent-child relationship as a result of the change of custody without notice or an opportunity to be heard. The United States Supreme Court has stated that "there is a presumption that 'fit' parents act in the best interests of their children." *Troxel v. Granville*, 530 U.S. 57, 68, 120 S.Ct. 2054, 147 L.Ed. 2d 49 (2000). The Nevada Statutes fails to define what a 'fit' parent is and Judge Sanchez nor Dr. Mortillaro declared Victoria an unfit parent. Yet, the court ignored her pleas that Charles had dumped the children in their own apartment and that they were left alone without parental supervision.

On 3/16/09 Victoria filed Petition to Seek Permission to Correct a Clerical Mistake... **[App. F]** VICTORIA contends that the *Rivero*[1] case is *suspect* in that no mention is made of a timeline. Likewise in *Ellis*[2] no mention is made whether the parties were afforded an opportunity to mediate constitutional issues first such as the children's education and welfare and to define for themselves what constitutes "joint custody" and to allow the parents their fundamental right to enter into a parental stipulation which may be used as child support guidelines before Carucci filed for a motion for a change of custody. VICTORIA contends that the Nevada Supreme Court's failure to reasonably define "joint custody" makes all such orders in VICTORIA'S case void and any other orders in other cases also void.

CONCLUSION

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[1] Rivero v. Rivero, 195 P.3d 328 (2008).
[2] Ellis v. Carucci, 161 P.3d 239 (2007).

For the above reasons, petitioner respectfully requests that her petition for a writ of certiorari be granted.

AFFIDAVIT

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

Victoria Giampa, being first being duly sworn, deposes and says:

1. That I have personal knowledge of all facts stated herein, except those facts stated to based on information and belief. If called to do so, I could and would competently testify to the truth of the facts stated herein, except those facts stated to be based upon information and belief;

2. That the Nevada Supreme Court fails in its duty to address the unreasonable and unnecessary bias and prejudice committed by Judge Sanchez and Judge Pomrenze when they violate Victoria's right to due process and access to this Court, which directly and proximately caused substantial injury and harm to her and her children;

3. That the Nevada Supreme Court fails to address Attorney Duckworth's papers which are devoid of points and authorities and thereby continually encouraging his manipulative pleading practices;

4. That the Nevada Supreme Court fails in its duty to address violations of the Best Interest of the Children standard when Charles is complicit in and contracts for his attorney's unprofessional tactics and culpable conduct in committing fraud upon the court when Attorney Duckworth from the law firm of Smith Larsen & Wixom unlawfully combines a *contaminated* modification of the 1st change of custody of Marco with the 2nd change of custody of Sarah

and unlawfully denies proper notice of a change of custody of Sarah;

5. That the Nevada Supreme Court fails in its duty to address procedural due process violations when Attorney Duckworth, with Judge Sanchez' help, deliberately and purposefully fails to file *first* for mediation on *parent/child issues* for Sarah and deliberately and purposefully fails to file a separate Notice and Hearing Date for a change of custody. This can hardly be considered proper notice for a hearing that would result in Victoria losing custody and visitation with her children;

6. That the Nevada Supreme Court fails in its duty to address its own orders that Victoria seek a final order from Judge Pomrenze which includes Victoria's Motions pursuant to NRCP 60(b);

7. That Victoria believes the Nevada Supreme Court deliberately ignores Judge Pomrenze when she fails to follow factors in the De Long case and declares *defendant* Victoria a vexatious litigant violating Victoria's 14th Amendment right to the care, custody and management of her children;

8. That Victoria's Petition for Rehearing is not moot because it presents important questions of a general challenge to the constitutional law of Nevada and decisions by the Nevada Legislature in the future;

9. That the Nevada Supreme Court invalidates the Best Interest of the Children Statute because it is void for vagueness and since the Nevada Legislature has not yet defined what "joint custody" is, then the (2) sentences are incompatible with each other's principals and all orders issued by the Eighth Judicial District Court Judges of the

State of Nevada should also be ordered void when they ignored Victoria's challenge to the statute;

10. That the Nevada Supreme Court ignores Judge Sanchez's and Judge Pomrenze's rulings when they make age-based distinctions of the minor children that violates the Equal Protection Clause;

11. Victoria further believes that with complete indifference, the Nevada Supreme Court and the State of Nevada Legislature deliberately violates NRS 125.480 by ignoring the statutes and rushing the minor children into early emancipation without procedural due process notice and an opportunity to be heard; thus, denying the minor children a relationship with their mother which totally deprived her of rights and responsibilities of child rearing;

12. That the Nevada Legislature should change the language in the Best Interest of the Children Statute to read **"joint intent"** instead of **"joint custody"** to allow the parties the freedom, without state interference, to decide what constitutes 'joint custody' which would allow parents their fundamental right to enter into a parental stipulation which may be used as child support guidelines;

13. That unconstitutional procedures are currently being used in Family Court in the State of Nevada and are leaving thousands of victims without any voice and without any redress in apparent efforts of attorneys' own fortune, enrichment and greed, and requests the U.S. Supreme Court take judicial notice of Albright v. Albright, Case No. D193637. Donna, a 'fit' parent, lost visitation and custody of her children, in a similar fact-pattern scenario, Case No. D193637, before Judge Cynthia Steele. Dale Albright abducted the minor children and moved to the State of Washington without first filing for mediation or filing a motion for a change of custody. Donna has lost all contact

with her 2 children, and has been diagnosed with rheumatoid arthritis and post-traumatic stress. Haddock v. Haddock, Case No. D321651. Rene paid $120,000 to 5 attorneys for fees to enforce child and spousal support. Judge Stephanie Miley deliberately violates the Nevada Revised Statutes and issues an Order that a California realtor, who does not hold a Nevada real estate license, receive a 6% commission. Rene immediately files a lis pendens to try to protect her one and only asset – her home. Thereafter, Judge Miley finds Rene in contempt and jails her for 3 days. She immediately files an appeal and thereafter, the Nevada Supreme Court ignores fraud upon the court, summarily dismisses her appeal, vacates her motions, denies spousal support and forces her file with the District Attorney to enforce child support. Rene has been diagnosed with post-traumatic stress.

14. Victoria believes that she finally escaped from *Hell Hole No. 5, Nevada Courts*, a phrase coined by the American Tort Reform Association, and that left behind are her 2 children Marco and Sarah who have lost out on the nurturing and emotional support of their mother, building family traditions, sharing dinner and time, belonging and connecting;

15. That Judge Sanchez, Judge Pomrenze, Attorney Duckworth, and Charles shut their eyes to the ugly reality that the parties' 2 minor children were living alone and unsupervised at the Country Club Towers;

16. Victoria is gravely concerned that the Nevada Supreme Court since 2005 failed to investigate any of her allegations that the children were living alone without parental supervision or at any point sought formal authority to pursue them;

17. That time and time again, the Nevada Supreme Court summarily dismissed Victoria's Petitions for Writs as either "failing to make any *salient* argument," the children are *now* adults," or "we are not persuaded that rehearing is warranted as we did not overlook or misapprehend any matter in the original petition.," and yet fails to address constitutional issues that the parties' children were left alone and without parental supervision ignoring the preponderance of evidence that they were not guided by their parent to receive an appropriate education as previously ordered by Judge Sanchez;

18. Victoria has confronted the inequities and abduction of her children with resolve, standing up to the injustice that permeates Family Court. Victoria prays that the United States Supreme Court issue an immediate review of the unconstitutional procedures that are currently being used in the State of Nevada, Family Court, in an apparent effort to emancipate children before the age of majority thereby denying parents the care, custody and management of their minor children and denying the children a liberty interest to be guided by their parent to an appropriate education.

DATED this 4th day of AUGUST, 2009.

Victoria Giampa

State: Nevada County: Clark

SUBSCRIBED and SWORN to before me this 4th day of AUGUST 2009.

NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
SCOTT LISH
No: 04-93367-1
My Appointment Expires Nov. 23, 2012